HON'BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

WRIT APPEAL No. 1725 OF 2006

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Between:

Regional Joint Director of Higher Education,
Government of A.P., Warangal

……Appellant

And

V. Rama Mohan Rao and two others

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Government Pleader for Higher Education

Counsel for Respondent No.1 : Sri A. Venkataramana representing
Sri D.V. Sitaram Murthy

Counsel for Respondent Nos.2 & 3 : None

Dated: 04-07-2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 14-02-2005 passed by the learned Single Judge in Writ Petition No.20936 of 2000 and Contempt Case No.1382 of 2004 whereby he directed the appellant to pay the arrears of salary along with other monetary benefits.

The writ petitioner was appointed as Junior Lecturer in Physics in Chaitanya Kalasala Junior College, Karmanghat, Ranga Reddy District (hereinafter referred to as, 'the college') on 01-08-1978 against an unaided post. In June 1981, he was absorbed against grant-in-aid post. By an order dated
06-07-1981, the management of the college declared that he has successfully completed the period of probation with effect from 01-08-1980. After ten years of his absorption against grant-in-aid post, the petitioner applied for leave from 27-06-1991 to
30-06-1991. Thereafter, he sought extension of leave for 15 days. The management of the college did not accept his request and terminated his service with effect from 25-06-1991 on the allegation of absence from duty.

The petitioner challenged the aforementioned action of the management of the college by filing an appeal before the Regional Joint Director of Intermediate Education, Andhra Pradesh (hereinafter referred to as, 'the Regional Joint Director'.) During the pendency of the appeal, the management of the college issued Memo dated 15-11-1993 which was served on the petitioner on
11-02-1994 proposing to hold departmental enquiry. The petitioner challenged the same in Writ Petition No.5049 of 1994. He prayed for quashing of the enquiry proceedings. He further prayed for early disposal of the appeal pending before the Regional Joint Director. By an interim order dated 21-04-1994, this Court stayed the departmental proceedings. The writ petition was finally disposed of on 11-02-2000 with a direction to the Regional Joint Director to

dispose of the appeal within a period of four weeks. After sometime, the petitioner filed Contempt Case No.822 of 2000 with the complaint that the direction contained in the Court's order dated 11-02-2000 has not been complied with. During the pendency of contempt proceedings, the Regional Joint Director passed order dated 06-07-2000 whereby he directed the management of the college to reinstate the petitioner, with a further direction to complete the disciplinary proceedings within three months in accordance with the provisions of Section 79 of the Andhra Pradesh Education Act, 1982 (for short, 'the Act').

In compliance of the order of the Regional Joint Director, the petitioner was reinstated in the service of the college with effect from 17-07-2000. Immediately thereafter, the petitioner filed Writ Petition No. 20936 of 2000 for issue of a direction to the Regional Joint Director of Intermediate Education, Warangal; Chaitanya Kalasala Junior College, Karmanghat, Nagarjunasagar Road, Hyderabad and Chaitanya Kalasamithi, Nagarjunasagar Road, Karmanghat to release the arrears of salary for the period between the dates of termination and reinstatement.

In the affidavit filed by him, the petitioner averred that as a consequence of his reinstatement pursuant to order dated 06-07-2000 passed by the Regional Joint Director, he has become entitled to payment of full salary for the period from the date of termination of service. He pleaded that the enquiry proceedings initiated against him will be deemed to have lapsed after expiry of three months specified in Section 79 of the Act and, therefore, the respondents are bound to pay him full pay with allowances.

In the counter affidavit filed by him, Sri G.V. Hanumantha Rao, Regional Joint Director has averred that supplementary annual statement in respect of the petitioner was approved for the year 2000-

01 but payment could not be made for want of concurrence of the Finance Department. However, from the month of March 2001, salary is being regularly paid to him. Sri Hanumantha Rao has further averred that the payment of salary for the period during which the writ petitioner remained out of employment will be decided after completion of the enquiry and regularization, if any, of the period of absence.

During the pendency of the writ petition, the learned Single Judge passed order in WPMP No.26616 of 2000 for payment of arrears of salary to the petitioner for the period from 13-09-1991 to 16-07-2000. After four years, the petitioner filed WPMP No.13449 of 2004 for regularization of the period of service from 1991 to 2000 and payment of arrears of salary. The same was disposed of by the Court on 23-08-2004 in terms of the prayer made in the application. This was followed by institution of Contempt Case No.1382 of 2004, wherein the petitioner complained that directions given by the Court for payment of salary and regularisation of the period have not been complied with.

The learned Single Judge disposed of the writ petition and contempt case by a common order. He held that the action of the non-petitioner (appellant herein) to withhold salary payable to the petitioner for a long period is wholly unjustified and unsustainable because the order of termination had been set aside by the appellate authority. He further held that pendency of enquiry cannot be made a ground to defer the payment of salary due to the employee.

We have heard learned counsel for the parties and perused the record. By a separate order passed today, we have dismissed Writ Petition No.26788 of 2005 filed by respondent No.1 for quashing enquiry report dated 26-10-2005 and show cause notice dated 02-11-2005 issued by the Special Officer appointed under Section 29 (3) (a)

of the Act. In view of that order, the departmental enquiry will be deemed to be pending on the date of disposal of Writ Petition No.20936 of 2000 and Contempt Case No.1382 of 2004 by the learned Single Judge.

In the above backdrop, we shall now consider whether the direction given by the learned Single Judge for payment of arrears of salary to respondent No.1 for the entire period from 01-08-1991 to 16-07-2000 is legally correct and justified. A recapitulation of the facts shows that the service of the respondent was dispensed with by the management with effect from 27-06-1991. The appeal preferred by him remained pending before the Regional Joint Director for almost nine years. The same was disposed of only after respondent No.1 filed Contempt Case No.822 of 2000 with the complaint that direction given by the Court vide order dated 11-02-2000 passed in Writ Petition No.5049 of 1994 had not been complied with. The Regional Joint Director directed the management of the college to reinstate the respondent but, at the same time, he also directed that enquiry be finalized. For the sake of convenient reference, the operative part of order dated 06-07-2000 passed by the Regional Joint Director is reproduced below:

> "Keeping in view of the facts and circumstances explained above the appeal dated 13-9-1991 of Sri V. Ram Mohan Rao, JL (terminated from services) Chaitanya Kalasala Junior College, Karmangat is hereby disposed off with the following observations:
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> 1. The management of Chaitanya Kalasala Junior College, Karmangat Ranga Reddy District has not followed the procedure stipulated in Section79 of A.P.Education Act, 1982.
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> 2. The Competent Authority and as per Sub-rule 2 of rule (80) of Education Act, 1982 the management is hereby given notice to reinstate Sri V.Ram Mohan Rao into service immediately and the disciplinary actions against the individual

following the procedure laid down in rule 79 of A.P.Education Act 1982 duly following the enquiry procedure within the stipulated period of 3 months.

The receipt of this proceedings should be acknowledged."

A reading of the above reproduced order of the Regional Joint Director makes it clear that while directing reinstatement of respondent No.1, the officer concerned did not give him clean chit and as per the finding recorded in enquiry report dated 26-10-2005, a copy of which is available on the record of Writ Petition No.26788 of 2005, the charge levelled against respondent No.1 has been proved. In view of this development, it is not possible to sustain the direction given by the learned Single Judge for payment of full salary and other monetary benefits to respondent No.1 for the entire period from 1991 to 2000.

We are further of the view that in a case like the present one, the learned Single Judge should have taken cognizance of the policy underlying the principle 'no work no pay' and should have deferred adjudication of the writ petition till the completion of the enquiry proceedings or at least, called upon the petitioner to file an affidavit disclosing the source of his sustenance during the intervening period and a corresponding opportunity to the management of the college to adduce evidence to show that the writ petitioner (respondent No.1 herein) was gainfully employed or was earning his livelihood by taking tuition or some other teaching assignment. The learned Single Judge should also have taken into consideration the fact that the writ petitioner was holding an aided post and the Government would not have released the grant-in-aid to the management for the period between June 1991 to July 2000. Adjudication of respondent No.1's claim without consideration of these factors has, in our view, resulted in failure of justice. Therefore, it is apposite to remit the case to the learned Single Judge for fresh adjudication of the writ petition.

In the result, the appeal is allowed. Order dated 14-02-2005 passed by the learned Single Judge in Writ Petition No.20936 of 2000 and Contempt Case No.1382 of 2004 is set aside and the case is remanded to the Single Bench for fresh adjudication of the writ petition and contempt case.

While disposing of the appeal in the manner indicated above, we give liberty to the petitioner to file affidavit on the issue of his gainful employment during the intervening period. A corresponding opportunity is given to the respondents to file counter affidavit to show that during the intervening period, the petitioner had, in fact, been earning and sustaining himself by undertaking teaching assignment or otherwise.

At this stage, learned counsel for the respondent No.1 submitted that his client's pay has not been fixed so far and he has not been given benefit of fixation of pay in the cadre of Junior Lecturer. Learned Government Pleader admitted that the pay of respondent No.1 has not been fixed so far. According to her, the pay fixation was not done on account of pendency of the disciplinary proceedings.

In our opinion, there could be no justification to deny the benefit of pay fixation to respondent No.1 on the pretext of pendency of enquiry. Once he has been reinstated in service, respondent No.1 will be deemed to be continuing in service from the date of termination. Therefore, de hors his right to claim salary for the intervening period, he is entitled to have the pay fixed on notional basis. Accordingly, we direct the appellant to re-fix the pay of respondent No.1 keeping in view the fact that he was reinstated pursuant to order dated 06-07-2000 passed by the Regional Joint Director. The arrears payable to respondent No.1 as a result of re-fixation shall be paid to him within three months of the receipt of copy

of this order.

G.S.SINGHVI, CJ

G.V. SEETHAPATHY,J

04-07-2006
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